98TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
No. 98-262

EXTENSION OF 8(a) PILOT PROGRAMS

JUNE 23, 1983.—Ordered to be printed

Mr. MITCHELL, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 273]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 273) to amend section 8(a)(1) of the Small Business Act, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SEC. 1. (a) Clause (B) of the first sentence of section 8(a)(1) of the Small Business Act is amended by striking out ", as shall be designated by the President within 60 days after the effective date of this paragraph," and inserting in lieu thereof "(other than the Department of Defense or any component thereof) as shall be designated by the President,"; and

(b) The designation of an agency pursuant to the amendment made by subsection (a) shall be made not later than sixty days after the date of enactment of this Act.

SEC. 2. The last sentence of section 8(a)(1) of the Small Business Act is amended to read as follows: "No contract may be entered into under subparagraph (B) prior to October 1, 1983 nor after September 30, 1985.".

SEC. 3. The last sentence of section 8(a)(2) is amended to read as follows: "The authority to waive bonds provided in this paragraph (2) may not be exercised prior to October 1, 1983 nor after September 30, 1985.".

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Amend the title so as to read: "An Act to amend section 8(a) of the Small Business Act.".

And the House agree to the same.

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LYLE WILLIAMS,
Managers on the Part of the House.

LOWELL P. WEICKER, Jr.,
RUDY BOSCHWITZ,
LARRY PRESSLER,
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CARL LEVIN,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 273) to amend section 8(a)(1) of the Small Business Act, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The principle differences among the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

1. 8(a) PROCUREMENT PILOT

Public Law 95–507 authorized an 8(a) pilot program which expired September 30, 1980. Under the provisions of the pilot, the President was authorized to select one agency over whom SBA would be given the authority to take procurement contracts for inclusion in SBA's 8(a) program for the development of minority enterprise. The President selected the Department of the Army.

The Senate bill would reopen the pilot program and require the President to select a new agency, other than the Defense Department or a component thereof, within sixty days. The pilot program would expire twenty months after enactment (sixty days for the President to act plus eighteen months for the pilot to operate).

The House amendment also would reopen this pilot program on October 1, 1983 for a period of two years, but would not restrict the authority of the President as to the agency to be selected nor would it require the selection to be done within any particular time frame.

The conference substitute reopens this pilot program on October 1, 1983 and requires the President, within sixty days after enactment, to select a new agency, other than the Defense Department or a component thereof, to participate in the program. The pilot is effective through September 30, 1985.

2. SURETY BOND PILOT

Public Law 95–507 also authorized a surety bond pilot program which expired September 30, 1980. Under this pilot, SBA was authorized to waive surety bond requirements for 8(a) contractors

which are start-up concerns and which have not been participating in the 8(a) program for more than one year. It took SBA more than two years to adopt final regulations. The Agency never granted any waivers.

The Senate bill does not reopen this pilot program.

The House amendment, effective on October 1, 1983, would reopen this pilot program through September 30, 1985.

The conference substitute also reopens this pilot program on October 1, 1983 through September 30, 1985.

The conferees recognize that by its terms the use of this authority will be limited under the eligibility requirements. Under the statute, before any bond requirement is waived, the Administration must determine, among other things, that the 8(a) small business concern is unable to obtain the requisite bond either from a surety company or by using the Administration's guarantee program. Furthermore, the Administration must determine that the contractor has the ability to perform the contract.

On the other hand, the conferees expect that the Administration will take the necessary steps to implement this pilot program and not take any action which would unnecessarily limit potential eligible participants by excluding from entrance into the regular 8(a) program firms which might be eligible for a bond waiver if admitted to the program.

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Managers on the Part of the Senate.

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COMMERCE BUSINESS DAILY

JUNE 23, 1983.—Ordered to be printed

Mr. MITCHELL, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 272]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 272) to improve small business access to Federal procurement information, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

"(a) Section 8(e) of the Small Business Act is amended to read as follows:

"(e)(1) It shall be the duty of the Secretary of Commerce, and the Secretary is hereby empowered, to obtain notice of all proposed competitive and noncompetitive civilian and defense procurement actions of $10,000 and above from any Federal department, establishment or agency (hereinafter in this subsection referred to as 'department') engaged in procurement of property, supplies, and services in the United States; and to publicize such notices in the daily publication Commerce Business Daily, immediately after the necessity for the procurement is established: *Provided,* That nothing in this paragraph shall require publication of such notices with respect to those procurements in which it is determined on a case-by-case basis that (A) the procurement for security reasons is of a classified nature; (B) the Federal department's need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if the time periods provided for in paragraph 2 were complied with; (C) a foreign government reimburses the Federal department for the cost of the procurement of the property, supplies, or services for such government

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and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty; (D) a statute provides that the procurement be made through another Federal department or from a specified source; (E) the procurement is for utility services and only one source is available; (F) the procurement is made against an order placed under a requirement or similar contract, including orders for perishable subsistence supplies; (G) the procurement results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal from an educational institution that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research; or (H) it is determined in writing by the head of the Federal department, with the concurrence of the Administrator, that advance notice is not appropriate or reasonable.

"(2) Whenever a Federal department is required to publish notice of procurement actions pursuant to paragraph (1) of this subsection, such department shall not—

"(A) issue a solicitation until at least fifteen days have elapsed from the date of publication of a proper notice of the action in the Commerce Business Daily, except if the solicitation is for procurement of requirements categorized as research or development effort, in which case until at least thirty days have elapsed from the date of such publication;

"(B) foreclose competition until at least thirty days have elapsed from either (i) the date of issuance of the solicitation, or (ii) in the case of orders under a basic agreement, basic ordering agreement, or similar arrangement, the date of publication of a proper notice of intent to place the order; or

"(C) commence negotiations for the award of a sole source contract until at least thirty days have elapsed from the date of publication of a proper notice of intent to contract: *Provided,* That nothing in this subparagraph shall prohibit an officer or employee of a Federal department from responding to a request for information.

"(3) Whenever notice is required by paragraph (1), such notice shall include—

"(A) a clear description of the property, supplies, or services to be contracted for, which description is not unnecessarily restrictive of competition;

"(B) the name, address and telephone number of the officer or employee of the Federal department who may be contacted for the purpose of obtaining a copy of either the solicitation or, if the notice is for an intent to contract on a sole source basis, such specification and information as practicable regarding the service or performance to be awarded; and

"(C) solely with respect to notice of intent to contract on a sole source basis, a statement that interested persons are invited to identify their interest and capability to respond to such requirement, or to submit proposals in response to such notice, within the stated period of time provided under paragraph (2).

"(4) Notwithstanding any other provision of law, unless the negotiations would be conducted pursuant to this section or section 9 of this Act, a Federal department may not commence negotiations for the award of a sole source contract for more than $1,000,000 in fiscal year 1984, for more than $500,000 in fiscal year 1985 and for more than $300,000 in fiscal year 1986 and each year thereafter unless—

"(A) the head of the procuring activity or his deputy, on a non-delegable basis, has approved the authority to enter into such contract, and

"(B) the contracting officer for such sole source contract has evaluated the responses to the notice of procurement action required in subparagraph (3)(C):

Provided, That nothing in this subparagraph shall prohibit an officer or employee of a Federal department from responding to a request for information.

"(5) In the case of all procurement actions in excess of $25,000 in which the award of a contract is likely to result in the award of subcontracts under such contract, unless the procurement for security reasons is of a classified nature, the Federal department shall promptly furnish for publication by the Secretary of Commerce a notice announcing the award in the Commerce Business Daily.

"(6) As used in this subsection—

"(A) the term 'sole source contract' means a contract for the purchase of property, supplies or services which is entered into or proposed to be entered into by a Federal department after soliciting and negotiating with only one source.

"(B) The term 'unsolicited proposal' means a proposal that is submitted to a Federal department on the initiative of the submitter for the purpose of obtaining a contract with the United States government, and which is not in response to a formal or informal request (other than a departmental request constituting a publicized general statement of need in areas of science and technology-based research and development that are of interest to the department).".

(b)(1) Except as to the amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act, the amendments made by this Act shall apply to procurement actions initiated ninety days after the date of enactment of this Act.

(2) The amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act shall apply to procurement actions initiated on or after October 1, 1983.

(3) The provisions of this Act shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds.

And the House agree to the same.

PARREN J. MITCHELL,
NEAL SMITH,
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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 272) to improve small business access to Federal procurement information, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The principal differences among the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Under section 8(e) of the Small Business Act, the Secretary of Commerce is directed to obtain and publish notice of Federal procurements above stated dollar thresholds, with ten enumerated exemptions. The existing statute does not, however, provide for any time intervals between the date of publication of the notice and the awarding of the procurement contract. Both the Senate bill and the House amendment prohibit a Federal department from issuing a solicitation for at least fifteen days after the date of publication of a notice of the procurement in the *Commerce Business Daily* and further prohibit Federal agencies from foreclosing competition for the procurement for an additional thirty days after either the issuance of the solicitation or in the case of orders under a basic agreement, basic ordering agreement, or similar arrangement, the date of publication of a notice of intent to place the order.

The conferees intend that this authority to publish notices of Federal procurements should continue to be vested in the Secretary of Commerce, or in any newly-created cabinet department that encompasses the trade functions of the Commerce Department. The conferees further expect that any other effort to transfer this authority from the department will be undertaken legislatively.

1. THRESHOLD AMOUNT

Under existing law the publication provisions apply to defense contracts of $10,000 and above and civilian contracts of $5,000 and above.

The Senate bill increases the threshold amount on civilian contracts to $10,000.

The House amendment has no similar provision.

The conference substitute increases the threshold amount on civilian contracts to $10,000.

2. EXEMPTION FOR CLASSIFIED REASONS

Under existing law there is an exemption from publication of procurements which for security reasons are of a classified nature.

The Senate bill re-worded the exemption to apply to procurements whose disclosure to more than one source would compromise national security.

The House amendment contains no similar provision.

The conference substitute retains the existing law language.

3. EXEMPTION FOR FOREIGN GOVERNMENTS

Under existing law there is an exemption from publication of procurements in which only foreign sources are to be solicited.

The Senate bill exempts from publication procurements in which a foreign government is reimbursing the United States for the cost of the procurement or if the terms of an international agreement or treaty require that the procurement be from specified sources.

The House amendment contains no comparable provision.

The conference substitute exempts from publication those procurements in which a foreign government is reimbursing the United States for the cost of the procurement and only one source is available, or if the terms of an international agreement or treaty authorize or require that the procurement be from specified sources.

4. EXEMPTION FOR CONTRACTS WITH OTHER AGENCIES

Under existing law there is an exemption from publication for those procurements which are made from another government department or agency, or a mandatory source of supply.

The Senate bill provides an exemption for procurements if a statute provides that it be made through another Federal department, establishment, or agency or from a specified source.

The House amendment contains no comparable provision.

The conference substitute exempts from publication those procurements for which a statute provides that they be made through another Federal department or from a specified source, or if the procurement results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982.

5. EXEMPTION FOR UTILITY SERVICES

Under existing law there is an exemption from publication of procurements which are for utility services and the procuring agency in accordance with applicable law has predetermined the utility concern to whom the award will be made.

The Senate bill eliminates this exemption.

The House amendment contains no comparable provision.

The conference substitute exempts from publication those procurements which are for utility services if only one source is available.

The conferees recognize that some utility services, such as telephone requirements, can, and should be, competed. However, in other instances, the conferees recognize that competition is impossible due to a monopoly on utility services in a given area, so that a requirement to advertise the procurement would be meaningless. Procurements in this category may include, but are not limited to, electrical services and water supply.

6. EXEMPTION FOR ORDERS UNDER EXISTING CONTRACTS

Under existing law there is an exemption from publication of procurements which are made by an order placed under an existing contract. There is also an exemption for procurements which involve perishable subsistence supplies.

The Senate bill eliminates both exemptions.

The House amendment contains no comparable provision.

The conference substitute exempts from publication those procurements which are made against an order placed under a requirements or similar contract, including orders for perishable subsistence supplies.

The conferees intend that this exemption be used in cases where an agency places an order against an existing contract or a requirements contract. Unless one of the other exemptions from publication applies to the initial, underlying contract, the conferees intend that this original contract only will be synopsized.

The conferees recognize that orders for perishable goods are often made against existing requirements contracts. Under this provision, all such orders for perishables would be exempted from the notice provisions in this law. However, the conferees do intend that whenever possible, and absent any other statutory exemptions, the contract itself, which is certainly not perishable, shall be subject to the notice provisions in this Act.

7. EXEMPTION FOR PERSONAL SERVICES

Under existing law there is an exemption from publication of procurements which are for personal or professional services.

The Senate bill eliminates this exemption.

The House amendment contains no comparable provision.

The conference substitute retains the Senate provision and eliminates the exemption from publication of procurements which are for personal or professional services.

8. EXEMPTION FOR EDUCATIONAL INSTITUTIONS

Under existing law there is an exemption from publication of procurements which are for services from educational institutions.

The Senate bill eliminates this exemption.

The House amendment contains no comparable provision.

The conference substitute exempts from publication those procurements which are for services from educational institutions if they result from an unsolicited proposal from those institutions that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed re-

search. For all such other unsolicited proposals, the conferees expect that the procuring department will use its utmost discretion to protect the originality and creativeness of the proposal when the agency is required to synopsize the procurement in the *Commerce Business Daily.*

9. NEGOTIATIONS FOR SOLE SOURCE CONTRACTS

The Senate bill provides that if notice of the procurement action for a sole source contract must be published, the agency cannot commence negotiations for the award of such a contract until at least thirty days have elapsed from the date of publication of proper notice of intent to contract.

The House amendment contains no comparable provision.

The conference substitute provides that if notice of the procurement action for a sole source contract must be published, the department cannot commence negotiations for the award of such a contract until at least thirty days have elapsed from the date of publication of proper notice of intent to contract, but that the department specifically is authorized to respond to requests for information during the thirty-day time period.

10. CONTENT OF NOTICE

The Senate bill specifies that the notice required to be published include a description of the subject matter of the contract, the name and address of the Federal employee who may be contacted to obtain a copy of the contract solicitation or other information, and a statement that any person may respond or submit a bid, proposal or quotation.

The House amendment contains no comparable provision.

The conference substitute requires that the notice contain a clear description of the subject matter of the contract; the name, address and telephone number of the Federal employee who may be contacted to obtain a copy of the solicitation or additional information, and, with respect to sole source contrcts, a statement that interested persons are invited to identify their interest and capability or to submit timely proposals.

11. SOLE SOURCE CONTRACTS

The Senate bill prohibits a procuring activity from commencing negotiations for sole source contracts for more than $100,000 unless the head of the procuring activity has approved the proposal to negotiate and the procuring activity has considered all responses to the procurement action, or unless the negotiation is for an 8(a) contract or an award pursuant to the Small Business Innovation Development Act of 1982.

The House amendment contains no similar provision.

The conference substitute imposes a prohibition against Federal departments commencing negotiations for sole source contracts (except under the 8(a) and Small Business Innovation Research programs) above a threshold amount unless the head of the procuring activity or his deputy, on a non-delegable basis, has approved the authority to enter into such contract and the contracting officer

has considered the responses to the notice of procurement action. Federal departments specifically are authorized, however, to respond to request for information.

The conference report provides for a three-year phase in of the dollar threshold at which these provisions will apply. Under the terms of the conference agreement, in fiscal year 1984 the requirements will be imposed on procurement actions in excess of $1 million; in fiscal year 1985 the level will be reduced to $500,000; and in fiscal year 1986 and each year thereafter the level will be $300,000. The conference will carefully monitor all agencies' compliance with the review of the authority to enter into sole source awards, and will consider a further reduction in the threshold level to $100,000.

12. NOTICE OF SUBCONTRACTING OPPORTUNITIES

The Senate bill requires that in all procurement actions in excess of $10,000 in which the award of subcontracts is likely, the Federal department entering the contract shall submit for publication in the *Commerce Business Daily* a notice announcing the award of the prime contract.

The House amendment contains no comparable provision.

The conference substitute requires that in all procurement actions in excess of $25,000 in which the award of subcontracts is likely, the Federal department entering the contract shall submit for publication in the *Commerce Business Daily* a notice announcing the award of the prime contract.

13. TVA EXEMPTION

The Senate bill provides that this act shall apply to the Tennessee Valley Authority only to the extent it deems practicable, consistent with the purposes and conduct of its programs and the policies of the Small Business Act.

The House amendment contains no comparable provision.

The conference substitute provides that this Act shall apply to the TVA only with respect to procurements to be paid from appropriated funds.

While the conference report will apply the provisions of this Act, as appropriate, to the Tennessee Valley Authority only for those procurements derived from appropriated funds made available to TVA, conferees expect TVA to voluntarily comply with the provisions of this Act to the greatest extent possible for procurements to be paid from power program funds, as well. In a manner consistent with the policies of the Small Business Act and the TVA's responsibility for the operation of its power programs, the conferees further expect TVA to continue awarding a substantial portion of its procurement contracts to small business, regardless of the source of the procurement funds, and to take appropriate additional action, as necessary, to increase small business awareness of, and participation in, TVA's total procurement effort.

14. EFFECTIVE DATE

The Senate bill is effective as to procurement actions initiated forty-five days after the date of enactment.

The House amendment is effective upon enactment.

The conference substitute makes the Act applicable to procurement actions initiated ninety days after the date of enactment except as to the restrictions on sole source contracts which are effective October 1, 1983.

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